

ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

RECEIVED

OCT 22 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments)
FM Broadcast Stations)
(Roscommon, Michigan)¹)

MM Docket No. 01-296
RM - 10299

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

COMMENTS AND REQUEST FOR IMMEDIATE DISMISSAL

1. Fort Bend Broadcasting Company ("Fort Bend"), licensee of Station WBNZ(FM), Frankfort, Michigan, by its counsel, hereby submits its Comments to the *Notice of Proposed Rule Making* ("NPRM"), DA 01-2379 (rel. Oct. 12, 2001) in the above-captioned proceeding.² Fort Bend's interest in this proceeding stems from the Counterproposal it filed in MM Docket No. 01-115 (Au Gres, Michigan). The comment date in that proceeding was July 16, 2001. One of the proposals in that Counterproposal was the allotment of Channel 246A to Beaverton, Michigan. The petition in this proceeding conflicts with the Beaverton allotment and should immediately be dismissed.

2. The *NPRM* in this proceeding proposed to allot Channel 246A to Roscommon, Michigan, as the community's second FM transmission service. The petition to allot Channel 246A to Roscommon was filed by Charles Crawford on August 20, 2001, long after the comment date in

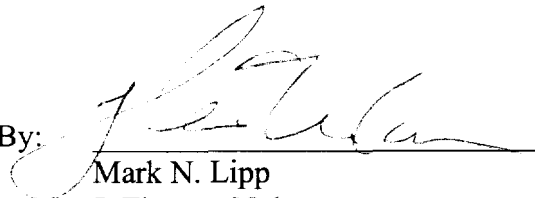
-
1. The caption in the *NPRM* incorrectly reads "Rosecommon, Michigan." The petitioner incorrectly spelled the name of the community for which he expressed an interest.
 2. Fort Bend became the licensee of WBNZ on October 12, 2001 by closing on its purchase of the station from Crystal Clear Communications, Inc., File No. BALH-20010425AAH.

the Au Gres proceeding. The attached channel study demonstrates that Crawford's proposal for Channel 246A at Roscommon is short spaced to Fort Bend's proposal for Channel 246A at Beaverton by approximately 45 km. *See* Exhibit 1. The Commission may have failed to identify this short spacing when it issued the *NPRM* in this proceeding because it appears that the Commission had not at that time entered the Beaverton substitute channel in MM Docket 01-115 into its data base. In any event, the *NPRM* should not have been issued, because on October 5, 2001, a week before the release of the *NPRM*, the Commission had already issued a Public Notice, Report No. 2506, announcing acceptance of the Beaverton rule making proposal. *See* Exhibit 2. Accordingly, the Commission should immediately dismiss Crawford's Roscommon proposal as late filed to a pending rule making proceeding. *See, e.g., Comfort, Texas*, DA 01-1864 (rel. Aug. 3, 2001).

3. Accordingly, Fort Bend urges the Commission to protect its prior filed and cut-off proposal for Channel 246A at Beaverton, Michigan and expeditiously dismiss the proposal for Channel 246A at Roscommon, Michigan.

Respectfully submitted

FORT BEND BROADCASTING COMPANY

By: 

Mark N. Lipp
J. Thomas Nolan
Shook, Hardy & Bacon
600 14th Street, NW, Suite 800
Washington, DC 20005-2004
(202) 783-8400

Its Counsel

October 22, 2001

EXHIBIT 1

**Allocation Study
Channel 246A, Beaverton, MI
For Use by WMRX-FM**

(Showing that Proposed Allocation is Short Spaced to the Proposed 246A at Roscommon, MI)

REFERENCE		DISPLAY DATES
43 53 16 N	CLASS = A	DATA 10-05-01
84 31 45 W	Current Spacings	SEARCH 10-16-01
----- Channel 246 - 97.1 MHz -----		
Call	Channel	Location
		Dist
		Azi
		FCC
		Margin

RADD	ADD 246A	Roscommon MI 70.28 352.9 115.0 -44.72
	Proposed Allocation Coordinates of Channel 246A at Rosecommon, MI	
RDEL	DEL 249A	Beaverton MI 0.00 0.0 31.0 -31.00
WMRXFM	LIC 249A	Beaverton MI 0.00 0.0 31.0 -31.00
WMRXFM	LIC 249A	Beaverton MI 0.00 0.0 31.0 -31.00
	Of no concern: Deletion of channel 249A at Beaverton proposed in MM Docket 01-115	
RDEL	DEL 245A	Standish MI 44.89 68.3 72.0 -27.11
WWCM	LIC 245A	Standish MI 44.89 68.3 72.0 -27.11
WWCM	LIC 245A	Standish MI 44.89 68.3 72.0 -27.11
	Of no concern: Deletion of channel 245A at Standish proposed in MM Docket 01-115	
WEEG	LIC 247A	Essexville MI 74.34 123.8 72.0 2.34
WLAVFM	LIC 245B	Grand Rapids MI 124.29 220.5 113.0 11.29
WKRKFM	LIC 246B	Detroit MI 189.60 145.1 178.0 11.60
WDEEFM	LIC 247A	Reed City MI 88.22 262.6 72.0 16.22
RADD	ADD 300A	Mcbain MI 57.62 307.7 10.0 47.62

EXHIBIT 2



PUBLIC NOTICE

DOCKET FILE COPY ORIGINAL

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Fax-On-Demand 202 / 418-2830
TTY 202 / 418-2555
Internet: <http://www.fcc.gov>
<ftp.fcc.gov>

Report No. 2506

October 5, 2001

CONSUMER INFORMATION BUREAU
REFERENCE INFORMATION CENTER
PETITION FOR RULEMAKING FILED

Interested persons may file statements opposing or supporting the Petitions for Rulemaking listed herein within 30 days, or as noted. See Sections 1.4 and 1.405 of the Commission's rules for further information.

RM NO.	RULES SEC.	PETITIONER	DATE RECEIVED	NATURE OF PETITION
RM-10027*	73.202(b)	Big City Radio- LA, L.L.C. (Filed by Marissa G. Repp, Hogan & Hartson L.L.P. 555 13 th Street, N.W. Washington, DC 20004-1109)	03/12/01	Request Amendment of the FM Table of Allotments to substitute Channel 296B1 for Channel 296A at Arcadia, California at coordinates 34-04-18 NL and 117-48-46 WL; substitute Channel 281A for Channel 296A at Fallbrook, California at coordinates 33-27-30 NL and 117-13-26 WL; delete 295B at Yucca Valley, California and allot Channel 295B1 at Desert Hot Springs, California at coordinates 34-01-48 NL and 116-31-48 WL; allot Channel 245A at Murrieta, California at coordinates 33-33-04

NL and 117-04-31 WL.

*THE ABOVE PETITION FOR RULEMAKING WILL BE TREATED AS A COUNTERPROPOSAL IN MM DOCKET NO. 01-11. REPLY COMMENTS TO THIS COUNTERPROPOSAL SHOULD BE SUBMITTED IN THIS DOCKET NO LATER THAN 15 DAYS (RATHER THAN 30 DAYS) AFTER THE DATE OF THIS PUBLIC NOTICE.

RM NO.	RULES SEC.	PETITIONER	DATE RECEIVED	NATURE OF PETITION
RM-10048*	73.202(b)	Ruston Broadcasting Company, Inc. (Filed by Dennis P. Corbett, Leventhal, Senter & Lerman P.L.L.C. 2000 K Street, N.W. Suite 600 Washington, DC 20006-1809)	03/19/01	Request Amendment of the FM Table of Allotments to substitute Channel 300C3 for Channel 257C3 at Saint Joseph, Louisiana at coordinates 32-04-01 NL and 91-21-29 WL.

*THE ABOVE PETITION FOR RULEMAKING WILL BE TREATED AS A COUNTERPROPOSAL IN MM DOCKET NO. 01-19. REPLY COMMENTS TO THIS COUNTERPROPOSAL SHOULD BE SUBMITTED IN THIS DOCKET NO LATER THAN 15 DAYS (RATHER THAN 30 DAYS) AFTER THE DATE OF THIS PUBLIC NOTICE.

RM NO.	RULES SEC.	PETITIONER	DATE RECEIVED	NATURE OF PETITION
RM-10103*	73.202(b)	Radio South, Inc. (Filed by Eric T. Werner, Verner, Liipfert, Bernhard, McPherson and Hand 901 15 th Street, N.W. Suite 700)	06/18/01	Request Amendment of the FM Table of Allotments to reallocate Channel 263C1 from Northport, Alabama to Helena, Alabama at coordinates 33-07-07 NL and 87-15-18 WL; reallocation of Channel 255C1 from Tuscaloosa, Alabama to Northport, Alabama at coordinates 33-03-

RM-10103	73.202(b)	Washington, DC 20005) Cox Radio, Inc 06/18/01 (Filed by Kevin F. Reed, Dow, Lohnes & Albertson, PLLC 1200 New Hampshire Avenue, N.W. Suite 800 Washington, D.C. 20036)	20 NL and 87-32-59 WL. Request Amendment of the FM Table of Allotments to delete Channel 247A at Homewood, Alabama and allot Channel 247C2 to Gardendale, Alabama at coordinates 33-34-55 NL and 86-56-46 WL; reallocating Channel 295C from Birmingham, Alabama to Homewood, Alabama at coordinates 33-29-19 NL and 86-47-58 WL; Substitute Channel 262A for Channel 247A at Dadeville, Alabama at coordinates 32-52-58 NL and 85-49-16 WL; Substitute Channel 300A for Channel 247A at Orrville, Alabama at coordinates 32-19-35 NL and 87-11-57 WL; delete Channel 248A at Talladega, Alabama and allot Channel 248A at Goldwater, Alabama at coordinates 33-02-22 NL and 86-00-21 WL; reallocate Channel 249A from Clanton, Alabama to Jemison, Alabama at coordinates 32-56-23 NL and 86-46-11 WL; modify the reference coordinates of Channel 248A at Pine Level, Alabama at coordinates 31-59-33 NL and 86-00-05 WL; modify the reference coordinates of Channel 249A at Thomaston, Alabama at coordinates 32-17- 45 NL and 87-44-45 WL.
----------	-----------	---	---

*THE ABOVE PETITION FOR RULEMAKING WILL BE TREATED AS A COUNTERPROPOSAL IN MM DOCKET NO. 01-19. REPLY COMMENTS TO THIS COUNTERPROPOSAL SHOULD BE SUBMITTED IN THIS DOCKET NO LATER THAN 15 DAYS (RATHER THAN 30 DAYS) AFTER THE DATE OF THIS PUBLIC NOTICE.

RM NO.	RULES SEC.	PETITIONER	DATE RECEIVED	NATURE OF PETITION
RM-10129*	73.202(b)	Crystal Clear Communications, Inc. (Filed by Mark N. Lipp, Shook, Hardy & Bacon 600 14 th Street, N.W. Suite 800 Washington, D.C. 20005-2004)	07/16/01	Request Amendment of the FM Table of Allotments to substitute Channel 249C2 for Channel 257C2 at Alpena, Michigan at coordinates 44-51-25 NL and 83-32-34 WL; <u>substitute Channel 246A for Channel 249A at Beaverton, Michigan at coordinates 43-53-16 NL and 84-31-45 WL</u> ; delete Channel 257C2 at Frankfort, Michigan and add Channel 257C1 as an upgrade at coordinates 44-42-05 NL and 85-39-24 WL; substitute Channel 271C3 for Channel 249C3 at Cheboygan, Michigan at coordinates 45-34-46 NL and 84-14-16 WL; delete Channel 245A and substitute Channel 295A at Standish, Michigan at coordinates 44-01-46 NL and 83-57-44 WL.

*THE ABOVE PETITION FOR RULEMAKING WILL BE TREATED AS A COUNTERPROPOSAL IN MM DOCKET NO. 01-115. REPLY COMMENTS TO THIS COUNTERPROPOSAL SHOULD BE SUBMITTED IN THIS DOCKET NO LATER THAN 15 DAYS (RATHER THAN 30 DAYS) AFTER THE DATE OF THIS PUBLIC NOTICE.

RM NO.	RULES SEC.	PETITIONER	DATE RECEIVED	NATURE OF PETITION
RM-10154	73.202(b)	Marathon Media Group, L.L.P. (Filed by Lee J. Peltzman, Shainis & Peltzman 1850 M Street, N.W.	08/13/01	Request Amendment of the FM Table of Allotments to substitute Channel 233A for 291A at Tecopa, California at coordinates 35-50-48 NL and 116-13-24 WL; substitute Channel 291C1 for 266C1 at Amargosa Valley, Nevada at coordinates

Suite 240
Washington, D.C. 20036)

36-34-48 NL and 116-26-42 WL; allotment of Channel 265C at Moapa, Nevada at coordinates 36-50-52 NL and 114-28-37 WL; allotment of Channel 262C at Escalante Utah at coordinates 37-46-13 NL and 111-36-04 WL; substitute Channel 270C2 for 266C at Kanab, Utah at coordinates 37-02-51 NL and 112-31-32 WL.

***THE ABOVE PETITION FOR RULEMAKING WILL BE TREATED AS A COUNTERPROPOSAL IN MM DOCKET NO. 01-135. REPLY COMMENTS TO THIS COUNTERPROPOSAL SHOULD BE SUBMITTED IN THIS DOCKET NO LATER THAN 15 DAYS (RATHER THAN 30 DAYS) AFTER THE DATE OF THIS PUBLIC NOTICE.**

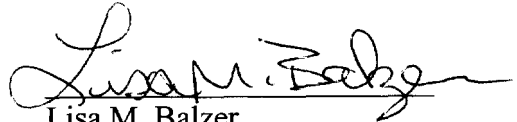
FCC

CERTIFICATE OF SERVICE

I, Lisa M. Balzer, a secretary in the law firm of Shook, Hardy and Bacon, do hereby certify that I have on this 22nd day of October, 2001, caused to be mailed by first class mail, postage prepaid, copies of the foregoing **"Comments And Request For Immediate Dismissal"** to the following:

* Ms. Kathleen Scheuerle
 Federal Communications Commission
 Mass Media Bureau
 445 12th Street, SW
 Washington, D.C. 20554

 Charles Crawford
 4553 Bordeaux Avenue
 Dallas, Texas 75205


Lisa M. Balzer

* HAND DELIVERED